in unusual circumstances. The rule referred to is a proper rule when applied in the proper circumstances. But the petitioners believe that the rule is not properly applicable to the instant case because of the procedural circumstances described above.

The decision by this Court in *Friend v. Talcott*, 228 U. S. 28, has been cited many times as authority to disprove that the rule referred to by the respondent is a hard and fast rule, save for those instances when the importance of the case creates the unusual circumstances that justify an exception to the rule. The pertinent statement from the decision in the *Talcott* case is as follows: *

> "There is a contention that the questions of waiver and election, although passed on by the court below, are not open for our consideration because it is asserted they were not raised in or considered by the trial court. As we think the contention is without merit, we proceed to dispose of the propositions concerning election and waiver and *res judicata*."

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* The *Talcott* case reached this Court by the issuance of a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit.

The following cases contain decisions supporting the petitioners' contention that the questions presented by their petition for a writ of certiorari involve an issue that has been adequately raised and considered in the Court below:

Consolidated Turnpike Co. v. Norfolk and Ocean View Ry., 228 U. S. 326, at 334;

Cumberland Coal Co. v. Board of Revision, etc., 284 U. S. 23, at 24;

Great Northern Ry. Co. v. Sunburst Oil & Refining Co., 287 U. S. 358, at 366.

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